

The Chairman reported that since the former session of this meeting the directors of the Pennsylvania Water & Power Company had met and by appropriate resolutions had also authorized and directed the issue and delivery of bonds and certificates of stock of said Company as provided by this meeting at its said former session, and had authorized and directed the making of the agreement by said Company with the Committee described in the resolution in that regard adopted at said former session, and that the deed from said Committee to said Company conveying the properties and franchises sold and purchased as set forth in the minutes of said former session had been delivered to said Company, and such agreement with said Committee had been mutually executed and delivered, and that bonds and stock certificates of said Company had thereupon been delivered as provided in the said resolutions adopted at said former session of this meeting.

The following resolution was thereupon adopted:

Resolved that this corporation accept the provisions of the Constitution of Pennsylvania adopted December 16, 1873, including Article 16 of said Constitution, and the President and Secretary are hereby authorized and directed to make under the seal of the corporation, and to file in the office of the Secretary of the Commonwealth, the certificate required by law for the purpose aforesaid.

Adjourned
Sherman Davis
Secretary

**Voting Trust Agreement, Pennsylvania Water & Power
Company**

PENNSYLVANIA WATER & POWER COMPANY.

VOTING TRUST AGREEMENT.

AGREEMENT, made this 7th day of February, 1910, between the holders of stock of PENNSYLVANIA WATER & POWER COMPANY, a corporation of the State of Pennsylvania, who shall become parties to this agreement by signing the same (hereinafter called the "Subscribers"), parties of the first part, and J. E. ALDRED, W. M. BARNUM and C. E. F. CLARKE (hereinafter called the "Voting Trustees"), parties of the second part.

WHEREAS, each of the Subscribers represents that he is the owner of the shares of stock set opposite his signature hereto in said Pennsylvania Water & Power Company (which is hereinafter called the "Company"), and

WHEREAS, the Subscribers deem it to be to the interest of said Company and of all the stockholders therein that this agreement should be made,

NOW, THEREFORE, in consideration of the agreements herein and of the terms and provisions hereof, and of One Dollar to each of them paid, receipt whereof is acknowledged, the parties hereto provide and agree as follows:

1. Each of the Subscribers agrees that he will forthwith deposit with the Voting Trustees or with their

2

authorized agent, the certificate or certificates for his said shares, together with a proper and sufficient instrument duly executed for the transfer thereof to the Voting Trustees.

2. Upon deposit as aforesaid by any Subscriber of a certificate or certificates of stock hereunder, accompanied by transfer as aforesaid, the Voting Trustees will deliver or procure to be delivered to such Subscriber or upon his order their Voting Trust Certificate or Certificates for the same number of shares of stock of the Company as is represented by the certificate or certificates so deposited, which Voting Trust Certificates shall be substantially in the following form:

No.

..... Shares.

**PENNSYLVANIA WATER &
POWER COMPANY.**

VOTING STOCK CERTIFICATE.

This certifies, that on November 1, 1912,.....
..... will be entitled to receive a
certificate or certificates, expressed to be fully
paid, for shares of \$100 each
of the Stock of Pennsylvania Water & Power Com-
pany, a corporation of the State of Pennsylvania,
and, in the meantime, to receive payments equal
to the dividends, if any, collected by the Voting
Trustees hereinafter mentioned upon a like num-
ber of said shares; and until after the actual deliv-
ery of such certificates the Voting Trustees shall,
in respect to any and all such stock, possess and

3

be entitled to exercise, except as otherwise expressly provided in the agreement hereinafter mentioned, all stockholders' rights of every kind, including the right to vote and to take part in or consent to any corporate or stockholders' action, it being expressly stipulated that no right to vote or to take part in or consent to any corporate or stockholders' action passes by or under this certificate or by or under any agreement, express or implied.

This certificate is issued under and pursuant to, and the rights of the holder are subject to and limited by, the terms and conditions of a certain agreement dated the 7th day of February, 1910, between holders of Stock of said Company and the Voting Trustees thereunder at said date, copies whereof are filed with said Company and with The New York Trust Company.

No stock certificate shall be due or deliverable hereunder before November 1, 1912, but the Voting Trustees, in their discretion, may make earlier delivery as provided in said agreement.

This certificate is transferable only on the books of the Voting Trustees by the registered holder hereof in person or by attorney according to rules established for that purpose by the Voting Trustees and on surrender hereof. Until so transferred, the Voting Trustees may treat the registered holder as owner hereof for all purposes whatsoever.

This certificate is not valid unless duly signed on behalf of the Voting Trustees by The New York Trust Company, their agent.

IN WITNESS WHEREOF, the Voting Trustees have caused this certificate to be signed by their duly authorized agent hereunder, this day of, 1910.

J. E. ALDRED,

W. M. BARNUM,

C. E. F. CLARKE,

Voting Trustees.

THE NEW YORK TRUST COMPANY,

Agent,

By

.....

Assistant Secretary.

THE NEW YORK TRUST COMPANY is hereby authorized by the Voting Trustees to sign and deliver Voting Trust Certificates as aforesaid as agent of the Voting Trustees.

Said Voting Trust Certificates shall be transferable as therein provided, and not otherwise, and transfer so made of any such certificate shall vest in the transferee all rights and interests of the transferor in and under such certificate, and upon such transfer the Voting Trustees will deliver or cause to be delivered a Voting Trust Certificate or Certificates to the transferee for the same number of shares as is represented by the Voting Trust Certificate so transferred. Until such transfer the Voting Trustees may treat the registered holder of a Voting Trust Certificate as owner thereof for all purposes whatsoever.

3. The shares of stock of the Company, certificates for which shall be deposited hereunder with the Voting

5

Trustees, shall be vested in the Voting Trustees, and shall be transferred to the name of the Voting Trustees on the books of the Company, and until after the actual delivery of certificates for said stock to the holders of the Voting Trust Certificates, in accordance with the provisions of this agreement, the Voting Trustees shall, in respect to all stock so held by them, possess and be entitled to exercise all stockholders' rights of every kind, including the right to vote and to take part in or consent to any corporate or stockholders' action and to receive dividends on said stock, and it is expressly understood and agreed that the holders of Voting Trust Certificates shall not have any right, with respect to any such stock held by the Voting Trustees, to vote or take part in or consent to any corporate or stockholders' action of the Company.

4. The holder of each Voting Trust Certificate shall be entitled, until distribution of stock in the Company as hereinafter provided for, to receive from time to time payments equal to the dividends, if any, collected by the Voting Trustees upon the like number of shares of stock of the Company as is specified in such Voting Trust Certificate.

5. On November 1, 1912, or at such earlier date as the Voting Trustees shall in their discretion determine, the Voting Trustees shall distribute the stock of the Company held by them to the holders of the Voting Trust Certificates as follows, that is to say, they shall, upon presentation and surrender on or after such date of Voting Trust Certificates accompanied by properly executed transfers thereof to the Voting Trustees, deliver certifi-

cates of stock of the Company for the shares specified in the Voting Trust Certificates so surrendered.

6. All questions arising among the Voting Trustees shall be determined by the decision of a majority of them. The Voting Trustees may in all matters act either at a meeting or by writing with or without meeting, and the decision or act of a majority of the Voting Trustees shall in all matters, including the exercise of the voting power, be deemed the decision or act of all the Voting Trustees.

In voting the stock held by them, and in any other action, meeting or proceeding, any or all of the Voting Trustees may act by proxy.

7. Any Voting Trustee may at any time resign by delivering to the other Voting Trustees his resignation in writing, and in every case of death, resignation or vacancy otherwise arising the vacancy so occurring shall be filled as follows: If such vacancy shall be in the voting trusteeship originally occupied by said J. E. Aldred, it shall be filled by appointment in writing by said C. E. F. Clarke, or his successor as voting trustee hereunder; if such vacancy shall be in the trusteeship originally occupied by said C. E. F. Clarke, it shall be filled by appointment in writing by said J. E. Aldred, or his successor as voting trustee hereunder; if such vacancy shall be in the trusteeship originally occupied by said W. M. Barnum, it shall be filled by appointment in writing by the firm of Lee, Higginson & Company, of Boston, or the successor thereof, as constituted at the time of such vacancy. Every successor so appointed shall from the time of such appointment be deemed a Voting Trustee hereunder, and have

all the estate, title, rights and powers of a Voting Trustee hereunder, and all acts and instruments shall be done and executed which shall be necessary or reasonably requested for the purpose of effecting such succession and of making the Voting Trustees as they shall exist upon such appointment the owners of record of the stock deposited as aforesaid with the Voting Trustees.

The agent of the Voting Trustees may at any time resign its duties hereunder by giving ten days' notice thereof to the Voting Trustees, and such agent may at any time be removed therefrom by a written instrument signed by at least a majority of the then Voting Trustees and delivered to the agent. In case of a vacancy in the position of agent the majority of the Voting Trustees may by writing signed by them and delivered to such successor elect a successor to the agent, which successor shall thereupon be entitled to all the rights, authority and powers hereby conferred upon the above named agent, and the agent so resigning or so removed shall thereupon deliver to such successor the stock certificates held by it hereunder, together with all books, registers and other papers pertaining or relating to said stock certificates or the Voting Trust Certificates which may from time to time be issued hereunder.

8. In voting upon said shares of stock or doing any act with respect to the control or management of the Company or its affairs, as holders of the stock deposited hereunder, the Voting Trustees shall exercise their best judgment in the interest of the Company to the end that its affairs shall be properly managed.

The Voting Trustees may vote on said stock in person or by such person or persons as they shall select as their proxy.

8

9. Any holder of any stock of the Company may at any time become a Subscriber hereto with respect to any such stock by subscribing this agreement and depositing the certificates of his said stock as aforesaid, accompanied by duly executed transfer thereof as above provided, and shall thereupon and thereafter be deemed and be a subscriber hereunder.

10. Any notice to be given to the holders of Voting Trust Certificates hereunder shall be sufficiently given if mailed to the registered holders of Voting Trust Certificates at the addresses furnished by such holders to the Voting Trustees or their agent.

11. No Voting Trustee shall be liable for any error of judgment or mistake of law or other mistake, or for anything save only his own wilful misconduct or gross negligence.

12. This agreement may be executed in several parts of like form, each of which, when executed, shall be deemed to be an original, and such parts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the several parties hereto have respectively signed this agreement, the day and year first above mentioned.

Heath
Chas E. Clark
Amos

Voting Trustees.

[9704D]

Amos Eighty-four thousand
 nine hundred and sixty (84,960) shares

Report of Receiver to Court

(J. E. A. Rec. 4)

Fcl. 1.

CIRCUIT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

KNICKERBOCKER TRUST COMPANY,
Complainant,

vs.

IN EQUITY.

McCALL FERRY POWER COMPANY,
Defendant.

TO THE HONORABLE JUDGES OF SAID COURT:

I, J. E. ALDEN, who was appointed Receiver of the property of the defendant by an order of this Court made on the 17th day of July, 1909, respectfully report that I forthwith took possession of such property, as directed in said order, and that within ten days from the date of said order I made and filed with the Clerk of this Court a proper bond, with sufficient surety, which was approved by a Judge of this Court, in the penal sum of fifty thousand dollars, as required in said order.

I further report that Henry P. Brown, Esq., Special Master, having executed and delivered a deed to William M. Barnum, the purchaser, I turned over and delivered said property (except the moneys in my hands as Receiver) to said purchaser, pursuant to the provisions of the decree of this Court, made the 18th day of December, 1909,

I further report that the moneys received and paid out by me as the Receiver of the property of the defendant appointed in this cause, and also in like causes in the

-2-

4 Circuit Court of the United States for the District
of Maryland, and the Circuit Court of the United States
for the Southern District of New York, are set forth
in the statement hereto annexed and made a part hereof.

I respectfully pray the instruction of the Court
as to the disposition of the moneys in my hands as Re-
ceiver, and further pray that when I shall have paid out
the same as directed by the Court, I may be discharged
as Receiver and my bond may be cancelled and the surety
5 thereon released.

J. E. ALDRED

Receiver

Dated, February 18th, 1910.

STATE OF NEW YORK,)
 : ss:
COUNTY OF NEW YORK,)

J. E. ALDRED, being duly sworn, says that he is
the Receiver described in the foregoing report; that he
has read said report and knows the contents thereof and
that said report is true to the best of his knowledge, in-
formation and belief.

J. E. ALDRED

Sworn to and subscribed before me
this 18th day of February, 1910.

Louis F. Mentz
Notary Public, Kings County,
Certificate filed in New York County.

(Notarial
seal)

MCGALL FERRY POWER COMPANY

S t a t e m e n t
-of-
Receiver's Receipts
-and-
Disbursements.

DISBURSEMENTS.

Insurance	\$3027.47
Taxes	1987.68
Rent, New York	475.00
McCall F. Sundry	<u>875.00</u>
	1350.00

Sundry Expense & Supplies	640.79
"	<u>375.00</u>
	1015.79

Receiver's Office Salaries (Messrs. Young, Lewis & Hinton)	2523.75
McCall Ferry Office & Works Expense	

Wages, Local Agent, Constable, Watchman, Engineer, Gauge Reader, Clerks, Stableman, Laborer,	3211.38
---	---------

Office Sundries & expense,	680.00
Misc. Repairs,	125.00
Water, Fire & Sewer- age,	121.91
Removing Conowingo Line,	93.50
Water Analysis,	20.00
Work on Pequea Road,	<u>50.00</u>
	4301.79
Travelling, etc.,	624.02
Settlement re Cary T. Hutchinson attachment,	5000.00
Legal Expenses	6892.41
Receivership, Fee & Expense	<u>7000.00</u>

\$33,722.91

McCALL FERRY POWER COMPANY

Statement
of
Receiver's Receipts
and
Disbursements.

RECEIPTS:

Cash and Banks,	\$29770.89
McCall Ferry Supply Co. Settlement.	2815.43
Material Sold.	
Cement Bags,	\$2169.15
Insurance Rebates	
Interest & Sundries,	2349.23
	<hr/> 4518.38
Knickerbocker T. Co., on a/c \$250,000 dep.	100000.00
Interest K.T. Co., " " " "	36061.57
	<hr/> \$173166.27
Disbursed per Statement,	<hr/> 33722.91
	<hr/> \$139443.36
Cash and Bank Balances	\$139443.36

Power Contract With Consolidated Gas Electric Light and
Power Company, August 29, 1910

THIS AGREEMENT made this 29th day of August 1910,

by and between THE PENNSYLVANIA WATER & POWER COMPANY, a corporation organized and existing under the laws of the State of Pennsylvania, hereinafter called the "Power Company", party of the first part, and the CONSOLIDATED GAS ELECTRIC LIGHT & POWER COMPANY OF BALTIMORE, a corporation organized and existing under the laws of the State of Maryland, hereinafter called the "Electric Company", party of the second part; WITNESSETH:

WHEREAS the Power Company is engaged in the business of generating and transmitting electric power, and whereas the Electric Company is in the business of distributing and selling electric energy and desires to purchase electric energy for the said distribution and sale,

NOW, THEREFORE, the parties hereto, in consideration of the premises, and of one dollar (\$1.00) and other valuable considerations, each to the other in hand paid, receipt of which is hereby mutually acknowledged, and the covenants hereinafter set forth, mutually agree as follows:-

ARTICLE 1.

Character of Service and Term.

For and during the term of ten (10) years, commencing on the first day of October, 1910, and during any extended life of this contract, effected under the provisions hereinafter set forth, the Power Company agrees to sell and supply electric energy to the Electric Company and the Electric Company agrees to purchase and pay for the same in such quantities as herein provided, and under the terms and conditions hereafter set forth. Such electric energy will be in the form of three phase, alternating current, at a frequency of twenty-five cycles per second, and at a pressure of thirteen thousand, two hundred (13,200) volts, as hereinafter provided, and hereinafter referred to

-2-

as "energy".

Provided the Power Company is ready to make delivery of the said energy on the first day of October, 1910, the Electric Company shall take and pay for the said energy from that date. It is agreed, however, that should the Power Company and the Electric Company be ready to deliver and take the energy before the above mentioned date, the energy will be delivered and taken and paid for under the terms and conditions provided for herein in Article XVI.

ARTICLE 11.

Amount of Energy to be Supplied.

The Electric Company agrees to take each year beginning and after twelve o'clock noon October first, 1910, and the Power Company agreed to supply, an amount of electric power equal to two-thirds ($2/3$) of the Electric Company's maximum peak-load of the next preceding year. The Electric Company may generate the balance by steam. It is agreed that the Electric Company's peak load as of last year shall be taken as twenty thousand (20,000) kilowatts. The Electric Company for the year beginning October first, 1910, will, therefore, take from the Power Company a maximum of thirteen thousand, three hundred and thirty-three (13,333) kilowatts. It is agreed that the amount of energy the Electric Company shall pay for and the Power Company shall supply, during the first year of this contract shall not be less than seventy million (70,000,000) kilowatt hours, subject to the conditions stated in Article V. and Article XVI. and in each year thereafter this amount shall be increased in proportion to the increase in the aforesaid peak load. This minimum amount of energy to be paid for shall be proportionately reduced, however, in case of any reduction, failure or interruption in the supply of energy.

The expression "electric power" used herein refers to the amount of electric power load used at any one time and measured in kilowatts, as distinguished

-3-

from the amount of "electric energy" used within a given period and measured in kilowatt hours.

ARTICLE III.

Rate to be Paid.

The Electric Company agrees to pay for all energy supplied under this contract at the rate of four (4) mills per kilowatt hour under the conditions provided for herein, subject to the exception stated in Article XVI.

ARTICLE IV.

Additional Energy.

The Electric Company shall have the right to take and the Power Company agrees to supply, additional amounts of power and energy under the terms and conditions herein provided, but the Power Company shall in no event be required to supply more than fifty per cent (50%) in excess of the amount of power and energy specified for the first year in Article II, that is to say, not more than twenty thousand (20,000) kilowatts and one hundred and five million (105,000,000) kilowatt hours per year.

In case the installation of additional apparatus is required to meet the demand for additional power and energy, the Power Company shall have a reasonable time in which to procure the necessary additional apparatus.

ARTICLE V.

Minimum Supply.

At times of low water the Power Company shall have the right to reduce the supply of energy to the Electric Company to a minimum in any one day of not less than fifty per cent (50%) of the pro rated daily equivalent in kilowatt hours of the amount of energy in kilowatt hours per year which the Electric Company agrees to pay for as set forth in Articles II. and IV, in which case the minimum amount of energy which the Electric Company shall be required to pay for shall be reduced accordingly.

22 771 177

-4-

The Power Company shall not, however, have the right to reduce the supply of energy at any time when the amount of water flow is sufficient to operate the Power Company's generating plant to its full rated capacity for twenty (20) hours per day. In case of any reduction or cessation of supply, except under the conditions hereinafter stated in this Article V, or for causes beyond the control of the Power Company, the Power Company shall pay the excess cost or amount, if any, over the cost of four (4) mills per kilowatt hour for electric energy as herein provided, which the Electric Company may be put to in generating or securing a supply of energy to make up the deficiency caused by the said reduction in supply.

ARTICLE VI.

Right of Power Company to Call for Steam Power.

The Power Company shall have the right to call upon the Electric Company for energy at such times and in such amounts as the Electric Company can supply with its then existing generating and cable capacity, over and above its own distribution requirements delivered to the Power Company's hereinafter mentioned sub-station, or at the Pratt Street Station of the United Railways and Electric Company, from the Electric Company's Westport station, during the twelve (12) hours per day of regular operation of said station, and the Power Company shall pay to the Electric Company for such energy at the rate of four and one-half (4½) mills per kilowatt hour, measured at the bus-bars of the Westport station. Such energy supply may be extended to twenty-four (24) hours per day at a price to be agreed upon, which shall take into consideration the cost to the Electric Company of an extra shift of labor at the said station.

ARTICLE VII.

Transmission Lines and Point of Delivery.

The energy to be furnished by the Power Company under this contract shall be transmitted from the point or points of generation on the Susquehanna River or

-5-

elsewhere by two separate transmission circuits, (which may be carried upon the same tower line) to the Power Company's terminal sub-station at Philadelphia Road and Seventh Street, in Highlandtown adjacent to the Eastern limits of the City of Baltimore, and there transformed and delivered to the Electric Company.

It is understood that the transmission lines and said terminal sub-station, or either, herein referred to, may be owned and operated, or both, by a company or companies other than the Power Company, but controlled by the Power Company. Ownership or operation by such company or companies shall be deemed to be ownership or operation by the Power Company, and the Power Company shall be in every way responsible for the acts of such controlled company for the purposes of this agreement.

ARTICLE VIII.

Terminal Station Equipment.

The Power Company's terminal sub-station with all necessary transformers, switches, switchboard and controlling apparatus shall be erected at the sole expense of the Power Company and the Power Company shall provide a suitable automatic circuit breaking switch and such measuring and indicating instruments as may be necessary for each of the Electric Company's cables or distribution lines leaving the said sub-station, together with all necessary ducts for such cables inside the sub-station building and within the property lines of the Power Company. The Power Company shall also provide within the said sub-station sufficient space for such additional feeder switches, regulators, and transformers to be furnished by the Electric Company, as the Electric Company may require to control its feeders and transmission lines leaving the said sub-station, for which space the Electric Company shall pay to the Power Company a rental of eight (8) per cent per annum on the cost of such space, and the Power Company will also, if required, operate the Electric Company's apparatus, for which service the

-6-

Power Company shall receive reasonable compensation. The Power Company, however, will not be responsible in any manner whatsoever, for any damage or loss that may occur to the Electric Company in any manner whatsoever, because of said operation by the Power Company or by reason of the opening or closing of any switches by the Power Company at the Electric Company's request.

ARTICLE IX

Interruptions for Repairs.

In order to make necessary repairs or changes on its system, the Power Company shall have the right to temporarily discontinue the service at such time or times as may be least inconvenient to the Electric Company, and except in case of extreme emergency, at least twelve (12) hours' notice shall be given by the Power Company to the Electric Company that such discontinuance of the service is to take place.

ARTICLE X.

Measurement of Energy.

All electric energy to be supplied hereunder shall be measured by watt hour meters to be installed by the Power Company at its expense, at its said terminal sub-station. The Power Company may also install graphic meters to check the peak load measurements. Such watt hour meters or other meters shall be of an approved type and shall be placed in the thirteen thousand, two hundred (13,200) volt circuit. The Electric Company shall have the right to install its own check meters in addition to the meters installed by the Power Company, and space and structure for the said check meters shall be provided by the Power Company in its said terminal sub-station.

Said meters installed by the Power Company shall be read at noon on the first day of each calendar month, for the purpose of ascertaining the kilowatt hours drawn and used during the previous month. The meters shall be tested and calibrated at suitable intervals or upon written request of either party in the presence of duly appointed representatives of both parties, and if, as the result

-7-

of such tests, any meter shall be found incorrect or inaccurate, it shall be restored to an accurate condition, or a new meter shall be substituted.

The readings of any meter tested and found to be not more than two per cent (2%) from accuracy, shall be considered correct and accurate. If, as a result of any such tests, any meter shall be found to register in excess of two per cent (2%) either above or below accuracy, then the consumption recorded by such meter since the last monthly reading previous to the request for test, shall be corrected accordingly, by one-half ($\frac{1}{2}$) of the percentage of inaccuracy so found, provided that this percentage is less than ten per cent (10%), but no correction shall extend back beyond thirty (30) days previous to the day on which such tests are requested, and if during such previous thirty (30) days, one or more prior tests shall have been made under the provisions hereof, then no correction shall extend back beyond the date of such prior tests. Should the error in the meter exceed ten per cent (10%) the probable consumption shall be estimated and paid for as agreed upon between the parties hereto.

ARTICLE XI.

Circuit Breakers.

The automatic circuit breakers on the Power Company's switchboards shall be set for at least fifty per cent (50%) in excess of the normal maximum load to which the Electric Company is at the time entitled.

ARTICLE XII.

Maintenance of the Electric Company's Equipment.

The Electric Company agrees to install and maintain all of its apparatus and distribution lines in first-class condition, and in case any of its apparatus which in any way affects the taking of energy from the Power Company breaks down or becomes defective, it will immediately use due diligence to repair said apparatus and operate the same. The Power Company shall assume no liability nor shall it be held responsible for any damages which may occur to the whole or any part of

-8-

the apparatus or lines of the Electric Company, or damages to life or property caused by the lines or apparatus of the Electric Company, except for such damages as may be due to the negligence of the Power Company or its employees.

ARTICLE XIII.

Insurance against Interruptions.

The Power Company agrees to exercise due care to give continuous and satisfactory service, and in the event of its generating station apparatus, or transmission lines, other than such apparatus as may be owned by the Electric Company, being destroyed or crippled by any cause whatsoever, it will immediately use due diligence to repair or replace the same so as not to interfere with the supply of energy to the Electric Company for a longer period than is absolutely necessary. To ensure against long continued interruptions in the event of accident or breakdown to the Power Company's apparatus, the Power Company shall keep in reserve in both its main Power House and in its terminal sub-station, sufficient spare capacity to take care of the breakdown of any single piece of apparatus.

ARTICLE XIV.

Unavoidable Suspension of Service.

If at any time during the continuance of the contract, the operation of the works or equipment of either party is suspended owing to war, rebellion, civil disturbances, strikes, serious epidemics, fires, lightning, or any other causes of a like nature beyond the control of either party, the party whose operations are so suspended shall not be liable to the other for damages or penalties for the time during such suspension, and the party whose operation is so interfered with shall use all reasonable diligence to resume operation.

ARTICLE XV.

Regulation of Pressure and Frequency.

J.H.M.M.

-9-

The Power Company agrees to maintain at the point of delivery to the Electric Company the voltage and frequency of the supply at approximately thirteen thousand, two hundred (13,200) volts and approximately twenty-five (25) cycles respectively, at all times during which the energy taken by the Electric Company does not exceed the maximum load to which the Electric Company is at that time entitled.

The Power Company agrees that the fluctuation of frequency and voltage shall not be such as to prevent the proper and effective operation of the transforming, converting and controlling apparatus owned by, and connected with the circuits of, the Electric Company. To insure such operation the Power Company shall install, operate and maintain the best and most up-to-date system of automatic regulators for its generators and if necessary, for its circuits.

For the purpose of utilizing the electric energy furnished by the Power Company, the Electric Company shall install its apparatus in accordance with good engineering practice. The said apparatus of the Electric Company shall be of such character and so operated as to maintain a practically balanced load between phases, and to draw current from the Power Company's lines at a nearly as possible to unity power factor. At no time shall the Power Factor be less than ninety per cent (90%) unless necessary for regulation purposes.

The Electric Company shall use all energy contracted for herein in a manner that will not cause undue disturbance to the Power Company's system or abnormal fluctuations in the demand for energy.

In order to insure the Electric Company against possible overloading of the aforesaid two transmission circuits and the consequent impairment of the pressure regulation, the Electric Company shall have the right to control and limit, at all times, the amount of power to be transmitted over the said transmission circuits. The Power Company shall, however, have the right to transmit over the said transmission circuits power to the extent of twenty thousand (20,000)

-10-

kilowatts for street railway operation, and shall have the right to take from the said transmission circuits, for other purposes, an amount of power not to exceed five thousand (5000) kilowatts within a distance not greater than fifteen (15) miles from the point of generation on the Susquehanna River.

ARTICLE XVI.

Special Provisions for First Three Months.

During the first three months of operation, under this contract, that is to say, until January 1st, 1911, or during such time as it is necessary to operate the Electric Company's Westport Station under experimental conditions to determine the best methods of joint operation and to insure uninterrupted supply during said period, the Electric Company shall pay for all energy furnished by the Power Company at the rate of three (3) mills per kilowatt hour, with no limitations as to the minimum amount of energy to be taken and paid for.

ARTICLE XVII.

Time of Payment for Service.

The Electric Company agrees to pay on or before the fifteenth day of each month for all energy taken from the Power Company during the preceding month. All payments shall be made without deduction for any disputed claim or counterclaim, which the Electric Company may have or claim to have against the Power Company under this contract or otherwise. All claims or counterclaims which the Electric Company may have or claim to have against the Power Company arising out of this contract, shall be presented to the Power Company in writing during the first fifteen (15) days of the following month.

ARTICLE XVIII.

Arbitration.

In the event of a difference of opinion on any question as to quantity, quality, kind, conformity with technical standards, value or cost of any service, property, matter or thing furnished, used, performed or done, or omitted to be furnished, used, performed or done in connection with this contract, the

-11-

respective parties mutually agree that any and all such questions be submitted to a Board of Arbitration consisting of three members, one to be appointed by the Power Company, one by the Electric Company, and the third to be chosen by these two. In the event of either party failing to appoint an arbitrator within (30) days after request from the other party, or in the event of a failure of the said two arbitrators to appoint a third, the said arbitrator shall be appointed by the person then occupying the position of Chief Judge of the Supreme Bench of Baltimore City. The expense of the Board of Arbitration shall be shared equally by the parties hereto.

The decision of any two of the arbitrators shall be final and binding upon the parties hereto. Such submission to and decision by said Board of any and all questions as to any of the matters aforesaid is hereby declared to be a condition precedent to the bringing of any legal action or proceedings by either party hereto on account of any matter or thing involving any such question.

ARTICLE XIX.

Renewal of Contract.

This contract shall automatically renew itself for periods each of ten (10) years duration, unless terminated by either party by written notice to the other party given at least one (1) year prior to the expiration of the period then in effect.

The provisions herein contained shall extend to and bind the parties hereto and their successors and assigns, respectively.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their proper officers thereunto duly authorized, and their

-12-

respective corporate seals to be hereunto affixed the day and year first
above written.

THE PENNSYLVANIA WATER AND POWER COMPANY,

John E. Edwards President.

ATTEST:

Thomas H. Davis
Secretary.

CONSOLIDATED GAS ELECTRIC LIGHT & POWER COMPANY
Of Baltimore,

by Samuel Z. Smith President.

Approved:

Herbert C. Wagner
Director, Electric Division.

ATTEST:

W. H. Blum
Secretary.

J. E. ALDRED, PRESIDENT

CHARLES E. F. CLARKE, TREASURER

SHERMAN L. LEWIS, SECRETARY

Pennsylvania Water & Power Company
Twenty-Four Exchange Place
New York

August 29th, 1910.

Consolidated Gas Electric Light and Power Company of Baltimore,
Continental Building,
Baltimore, Md.

Gentlemen:—

Referring to the contract entered into on the
29th day of August 1910, by and between you and this
Company, we hereby give you permission to increase by ten per cent (10%)
the maximum amount of electric power to be taken during the first year's
period of the said contract, without increasing the minimum amount of
electric energy to be taken and paid for as set forth in Article 11 of
said contract. This will entitle you to fourteen thousand six
hundred and sixty-six (14,666) kilowatts of electric power.

Yours very truly,

PENNSYLVANIA WATER AND POWER COMPANY.

By J. E. Aldred
President

Power Contract With United Railways and Electric
Company, February 8, 1911

CONTRACT FOR ELECTRIC POWER

PENNSYLVANIA WATER & POWER COMPANY

AND

THE UNITED RAILWAYS & ELECTRIC COMPANY

OF BALTIMORE

Agreement, made this 8th day of February, in the year nineteen hundred and eleven, by and between THE PENNSYLVANIA WATER & POWER COMPANY, a corporation of Pennsylvania (hereinafter called the Power Company), and THE UNITED RAILWAYS & ELECTRIC COMPANY OF BALTIMORE, a corporation of Maryland (hereinafter called the Railways Company).

WHEREAS the Power Company is engaged in the business of generating, transmitting and transforming hydro-electric power; and the Railways Company is operating an electric railway system in the City of Baltimore and adjacent territory,

NOW THIS AGREEMENT WITNESSETH, that in consideration of one hundred dollars (\$100) by each to the other paid, the receipt whereof is acknowledged, and in consideration of the mutual undertakings and promises hereinafter set forth, the Power Company agrees to sell and supply electric energy to the Railways Company, and the Railways Company agrees to use and pay for the same, under the provisions, terms and conditions following:

ARTICLE I.

DURATION OF CONTRACT. This Agreement shall terminate at the expiration of fifteen (15) years from the 8th day of February, 1911, provided, always, that the Railways Company shall have the right and option to terminate the same prior to that time, at the end of either five (5) or of ten (10) years from said date, upon giving to the Power Company written notice of its intention so to terminate at least six (6) months next before the expiration of such five (5) or ten (10) year period.

ARTICLE II

POINT OF DELIVERY. All energy hereby contracted for shall be supplied by the Power Company to the Railways Company at the latter's Pratt Street Power Station; and the prices hereinafter named are based upon deliveries at said point.

ARTICLE III.

CHARACTERISTICS OF ENERGY SUPPLIED. The said energy shall be supplied in the form of three (3) phase alternating current at a frequency of approximately twenty-five (25) cycles per second and at a pressure of approximately thirteen thousand (13,000) volts.

ARTICLE IV.

QUANTITIES. For convenience of description and reference, the electric power to be supplied by the Power Company under this Agreement is classified and specified as follows:

(a) **FLAT POWER.** That is to say, power to a definite amount which the Railways Company agrees to accept and the Power Company undertakes to supply (subject to reduction as hereinafter specified under Article VIII) at all times during each and every twenty-four (24) hour day, said amount of power being twelve thousand (12,000) kilowatts, subject to the right of increase in Article X provided. And the Railways Company shall have the right to take as flat power, electrical energy to an amount not exceeding during any day of twenty-four (24) hours, two hundred and thirty thousand and four hundred (230,400) kilowatt hours, this amount being based on a load factor of eighty per cent. (80%).

(b) **SURPLUS POWER** (which the Railways Company agrees to accept and the Power Company agrees to supply). That is to say, such power in excess of the flat power as, together therewith, will be sufficient during the running of this Agreement to operate the Railways Company's entire system between the hours extending from 10 P. M. of each and

every day to 1 P. M. of the next day, and including all of the hours of Sundays throughout the year.

The Power Company may also supply as surplus power between the hours extending from 1 P. M. to 10 P. M. of week days, energy to make up deficits, as hereinafter provided under Article VIII.

At all hours except between 1 P. M. and 10 P. M. of week days the Power Company shall supply all energy which may be necessary to provide for the Railways Company's requirements, subject to reduction, as hereinafter specified under Article VIII.

ARTICLE V.

PRICES. For energy supplied as "flat power" the price shall be at the rate of \$24.00 per kilowatt per annum supplied and used.

For energy supplied as surplus power the price shall be 3 mills per kilowatt hour supplied and used.

ARTICLE VI.

MEASUREMENTS. All electric energy supplied hereunder shall be measured by watt hour meters, to be installed and maintained by the Railways Company at its expense at the Pratt Street Power Station. The Railways Company may also install graphic or other meters to check the necessary measurements. Such watt hour meters or other meters shall be of an approved type, and shall be so connected as to measure the energy delivered to the thirteen thousand (13,000) volt busbars. Deficiencies which may occur in the amount of electric energy to be supplied by the Power Company shall be calculated from measurements of the output of the Pratt Street Power Station of the Railways Company, and of the energy supplied by the Power Company during the period or periods in which such deficiency occurs. The Power Company shall have the right to inspect all the meters used by the Railways Company to measure power or energy under this contract, and to install its own check meters in addition to the meters installed by the Railways Company, and space and structure for the said check meters shall be provided by the Railways Company in the said Pratt Street Power Station. Said meters installed by the Railways Company shall be read and recorded hourly, for the purpose of ascertaining the kilowatt hours used. The meters shall be tested and calibrated at suitable intervals upon written request of either party, in the presence of duly appointed representatives of both parties, and if, as the result of such test, any meter shall be found incorrect or inaccurate, it shall be restored to an accurate condition or a new meter substituted. The reading of any meter tested and found to be not more than Two per Cent. (2%) from normal accuracy at all ranges within the limits between which it is in use, shall be considered correct and accurate. If, as a result of any such test, any meter shall be found to register in excess of two per cent. (2%) either above or below normal accuracy, then the consumption recorded by such meter since the last monthly reading previous to the request for test, shall be corrected accordingly by one-half of the percentage of inaccuracy so found, provided that this percentage is less than ten per cent. (10%); but no correction, whatever the inaccuracy, shall extend back beyond thirty (30) days previous to the day on which tests are requested, and if during such previous thirty (30) days one or more prior tests shall have been made under the provisions hereof, then no correction shall extend back beyond the date of such prior tests. Should the error in the meter exceed ten per cent. (10%), the probable consumption for the preceding thirty (30) days—or since the last test if within thirty (30) days—shall be estimated and paid for as may be agreed between the parties hereto; and, in default of agreement, the dispute shall be settled by arbitration, as provided for in Article XI hereof.

ARTICLE VII.

REGULATION AND USE OF APPARATUS AND CURRENT. Variations in frequency or pressure, or both, of the power supplied, shall not be such as to prevent successful operation of the steam-driven electric generating apparatus of the Railways Company when connected in parallel with the Power Company's circuits, provided said steam-driven apparatus is maintained and operated in accordance with good practice, and to this end the Power Company shall adjust the potential upon the circuits through which power is supplied to the Railways Company in such manner as shall practically prevent the variations of potential as delivered at Pratt Street Power Station which otherwise would result from variations of load on the transmitting circuits.

The Railways Company shall maintain and operate its apparatus in such manner as will maintain a practically balanced load between phases, and shall utilize energy from the Power Company's circuits at a power factor not less than ninety per cent. (90%).

Inasmuch as it is impracticable, by reason of fluctuations in the Railways Company's load, to maintain the quantity of energy to be supplied by the Power Company between the hours of 1 P.M. and 10 P.M. on week days at exactly twelve thousand (12,000) kilowatts, or such other amount of "flat power" as the Power Company may be obligated to supply under this contract, it is the intent of this contract that between said hours on week days (except as provided in Article VIII) the Power Company shall supply and the Railways Company shall have the right to use an average of twelve thousand (12,000) kilowatts or other such obligated amount during the hours when the Railways Company's requirements equal or exceed the amount so demandable. Provided, however, that taking into consideration the fluctuating character of the load in accomplishing this result, the Railways Company shall maintain the demand for power on the Power Company as nearly as may be practicable at the twelve thousand (12,000) kilowatts or other amount to which it may be entitled under this contract.

ARTICLE VIII.

INTERRUPTIONS AND DEFICIENCIES. A. If at any time during the continuance of this contract the Power Company shall be prevented from supplying, or the Railways Company shall be prevented from using all or any part of the energy hereby contracted for, by reason of war, rebellion, civil disturbances, strikes, serious epidemics, fires, or other causes of like nature beyond the control of either party, the obligation of the Power Company to supply, and the obligation of the Railways Company to use and pay for energy contracted for hereunder, shall cease until the time when the party so incapacitated shall, by the exercise of all reasonable diligence, be able to resume such supply or use. But deficiencies in the supply or in the use of power caused by conditions of low water at the Power Company's dam; temporary interruptions caused by lightning or by defects or break-downs in the machinery, apparatus or transmission and distribution lines of either party, shall not be considered as causes excusing supply or use hereunder; and deficiencies in supply arising from such last-named causes shall be governed by Subdivision "D" of this Article.

B. The Power Company will maintain its plant and system in first-class condition, and use the utmost care and diligence consistent with the state of the art in the operation of its system, so as to furnish, as nearly as practicable, a continuous and satisfactory supply of power; will keep in reserve, both in its main power-house and in the terminal sub-station, sufficient spare equipment to provide for the breakdown of any single piece of apparatus, and will provide transmission circuits and cables to such extent as may be necessary to enable it to make repairs upon any transmission circuit or cable without necessitating a reduction in the quantity of power supplied to the Railways Company.

The Railways Company agrees to install and maintain all of its receiving apparatus and distribution lines in first-class condition, and in case any of its apparatus which in any way affects the taking of energy from the Power Company breaks down or becomes defective, it will immediately use due diligence to repair said apparatus and operate the same.

C. At times of low water the Power Company shall have the right to reduce the supply of power to a minimum, in any one day, equal to twenty-five per cent. (25%) of the "flat power" energy which the Railways Company may at such times have the right to use—the Railways Company having the right to take such energy at any rate in the morning and evening peaks which it may desire, not exceeding the maximum value of the morning peak power which it may then be entitled to take under this Agreement. Provided, however: First—That the Railways Company shall have and receive forty-eight (48) hours' notice of each and every reduction before the same goes into effect; and provided, Second—(and the Power Company guarantees, nor will it make any contracts with its other customers to prevent)—that the supply of the Railways Company shall not, during any twenty-four (24) hour period, be reduced hereunder below one-half of the Power Company's total available energy. It is the purpose of the Power Company to provide hereby that the supply of the Railways Company shall not at any time be less than twenty-five (25%) per cent. of the quantity demandable under this Agreement; and that, notwithstanding said limit of twenty-five (25%) per cent., the Railways Company shall, in times of reduced supply, be a preferred customer of the Power Company to the extent of one-half of the latter's total energy during such period's of reduction.

D. If, on account of low water, repairs, or for any cause (except as excused by Paragraph "A" of this Article), the Power Company shall be unable to supply the full amount of electric energy to which the Railways Company may be entitled under Article IV of this Agreement (so that the Railways Company shall be compelled to supply such deficiencies by use of its steam plant, or otherwise), then the Power Company will pay an amount (which the Railways Company may deduct from the monthly settlements herein-after provided for) equal to *4 mills* per kilowatt hour for all such deficiencies, calculated (in the case of each and every reduction) for a minimum duration of thirty (30) days), and for the actual duration, if in excess of thirty (30) days. The purpose of this provision is to indemnify the Railways Company for the agreed excess cost to it of producing, by its steam plant, the supply cut off; and it is recognized that the Railways Company, when compelled to supply by its steam plant power in lieu of that so cut off, cannot operate economically for less than periods of thirty (30) days.

Provided, however, that (subject to the limitations hereinafter mentioned) the accumulated deficiency in kilowatt hours of any one month may be made up by the Power Company during the next succeeding month or months, when it has surplus energy available and when the Railways Company may be able to utilize such surplus energy as an addition to the supply to which it may be then entitled. Deficiencies in flat power so made up shall be paid for at the rate of *.3425 cents* per kilowatt hour, and deficiencies in surplus power so made up shall be paid for at the rate of *3 mills* per kilowatt hour. The right of the Power Company to make up the deficiency of any month shall cease three (3) years from the end of such month in which said deficiency shall occur, and at the termination of this Agreement, if the same shall terminate before the expiration of any three year period.

ARTICLE IX.

PAYMENTS AND SETTLEMENTS. The Railways Company shall make monthly cash settlements on the fifteenth day of each month for the indebtedness of the preceding calendar

month; and in case of any disagreement between the parties as to the amount of any monthly settlement, the disputed portion shall be arbitrated as provided in Article XI hereof.

ARTICLE X.

102
ADDITIONAL POWER. A. At any time and from time to time during the running of this Agreement, the Railways Company shall, at its option, be entitled to take, and the Power Company shall be obligated to supply, such additional flat power as, together with that provided by Article IV hereof, will be sufficient to enable the Railways Company to dispense with more of its steam-generated electric power; provided, however (1), That the additional flat power demandable by the Railways Company hereunder shall not exceed six thousand (6,000) kilowatts; and provided (2), that if and as such additional flat power is demanded, the amount thereof shall not thereafter be subject to reduction during the running of this Agreement; and provided (3), that such additional flat power shall be paid for at the rate of *3425 cents* per kilowatt hour; and provided (4), that the supply and use of such additional power shall be subject to the provisions of Article VIII of this Agreement; and provided (5), that if any additional apparatus or facilities shall be required to enable the Power Company to supply such additional power, said Company shall have a reasonable time, not exceeding nine (9) months from demand, within which to install or prepare the same.

106
B. At any time during the running of this Agreement the Railways Company shall, at its option, be entitled to take, and the Power Company shall be obligated to supply, such power, in addition to that to which the Railways Company may then be entitled, as will be sufficient to render unnecessary any use for its railway purposes, of the Railways Company's power plant, provided, however (1), That if any additional apparatus or facilities shall be required to enable the Power Company so to furnish all of the power requirements of the Railways Company, the Power Company shall have a reasonable time, not exceeding twelve (12) months from demand, within which to install or prepare the same; and provided (2) that the prices and quantities hereinbefore fixed and agreed upon shall be superseded by a uniform price of *4.8 mills* per kilowatt hour for the entire power requirements of the Railways Company so to be furnished and used; and provided (3) that all the remaining provisions of this Agreement, not inconsistent with such changes in the quantities and prices of power, shall continue and remain in force, except that the Power Company will guarantee to the Railways Company a continuous supply of power adequate at all times for its entire requirements.

C. It is understood and agreed that the undertakings and promises of the Power Company in this Article contained, are inducements to the execution of this Agreement by the Railways Company; and the Power Company, for the money and other considerations hereinbefore set forth in this Agreement, covenants that said undertakings and promises shall be and remain irrevocable during the running of this Agreement.

ARTICLE XI.

ARBITRATION. If and whenever any dispute shall arise over the construction of this contract, or over the rights and duties of either party thereunder, then upon the demand of either party and within ten (10) days from the time of such demand, each party shall name an arbitrator, and the two so named shall promptly thereafter choose a third. If either party shall fail to name an arbitrator within ten (10) days from said demand, or if any two arbitrators named shall fail within ten (10) days from their nomination to agree upon and appoint the third, then such second or third arbitrator, as the case may be, shall be appointed by any Judge of the Supreme Bench of Baltimore City. The decision of any two of the

arbitrators shall be final and binding upon the parties, and such submission to a decision by arbitrators is hereby declared to be a condition precedent to the bringing of any action or suit by either party hereto against the other on account of any matter within the terms of this Article. But the parties hereto may, by mutual consent, refer any matter in dispute to their respective General Managers, who shall be empowered to call in, if necessary, a third party to be agreed upon between them, as umpire, and the decision of the umpire shall be final.

ARTICLE XII.

CANCELLATION. If the Power Company shall fail to commence deliveries on or before the first day of September, 1911, or if the Power Company shall fail to keep and perform its obligations contained in Subdivision "B" of Article VIII, or in Article X hereof, the Railways Company may, at its option and upon thirty (30) days' written notice, cancel this contract without prejudice to any right of action thereunder. If the Railways Company shall fail to keep and perform its obligations as contained in Subdivision "B" of Article VIII; or if it shall for a period of thirty (30) days be in default on any payment due hereunder (not being a sum in dispute or arbitration), then the Power Company shall have the right, at its option and upon thirty (30) days' written notice, to cancel this contract without prejudice to any right of action thereunder. Provided, however, that the liability of the Power Company for inability (without fault on its part) to supply the full amount of power contracted for under this Agreement, shall be limited to the deficiency charges provided by Article VIII hereof.

ARTICLE XIII.

The rights and obligations created by this contract shall inure to and bind the successors and assigns of the respective parties.

Until such time as the Power Company shall regularly qualify to do business in Maryland, the Superintendent or Manager in charge of the Highlandtown sub-station of the Susquehanna Transmission Company of Maryland shall be and continue to be the Agent of the Power Company in Maryland for the purpose of service of process in any litigation growing out of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their proper officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed the day and year first above written.

THE PENNSYLVANIA WATER & POWER COMPANY,

By J. E. ALDRED, President.

Attest: SHERMAN L. LEWIS, Secretary.

THE UNITED RAILWAYS & ELECTRIC COMPANY,

of Baltimore,

By WM. A. HOUSE, President.

Attest: WM. EARLY, Secretary.

Johnson's Legal Opinions Re: Eminent Domain

October 31, 1905.

John G. Johnson, Esq.,
Land Title Building,
Philadelphia, Pa.

Dear Sir,

We desire to submit the following matter for your consideration:

The McCall Ferry Power Company, as you will doubtless recall, is a Pennsylvania corporation, formed by the consolidation of two corporations formed under the provisions of the Act of April 20th, 1874, and supplements thereto, for the storage and transportation of water and water power for commercial and manufacturing purposes in the Townships of Lower Chanceford, in York County, and Martic, in Lancaster County.

The Company now desires to obtain a large piece of land near McCall's Ferry in the Township of Martic, this piece of land being one that will be flooded by the dam when finally constructed, but at present is needed for terminal and storage purposes. The Company informs us that this piece of land is absolutely necessary for its enterprise, and that it does not constitute five per cent. of the total property re-

John G. Johnson, Esq.

-2-

Oct. 31, 1905.

quired for the development, the remaining ninety-five per cent. being owned by the Company. Upon this state of facts, we desire to know whether you are of the opinion that McCall Ferry Power Company has a right to condemn this property.

You will note that the particular property which the Company desires to acquire in this instance is situated in the Township of Martic, one of the townships where the Company has power to furnish water and water power. If you are of opinion that the Company may condemn this property, we desire also to know if you believe that the Company may condemn lands necessary for its purposes outside of the Townships of Martic and Lower Chanceford.

Assuming that the Company has powers of condemnation, and that proceedings are brought to condemn the piece of land to which we have referred, is the Company the sole judge of the necessity of the particular land needed, or may the property owner attempt to show in Court that some other piece of land is just as good for the purposes of the Company?

The most important case with which we are familiar on these points is Keller v. Riverton Water Company, 161 Pa. 422.

The two enclosed opinions which were prepared by Wm. C. Farnsworth, Esq., of Harrisburgh, and submitted to Houseman and his associates in connection with their proposed development of the Susquehanna River, may be of some assistance to you in your investigation. In the opinion numbered "1", the right

John G. Johnson, Esq.

-3-

Oct. 31, 1905.

of condemnation is considered by Mr. Farnsworth at pages 17 and following. As to the points considered by Mr. Farnsworth in opinion numbered "2", if the only risk that our clients might incur in starting condemnation proceedings would be that a Federal Court might hold that the Act giving the Company powers of condemnation was unconstitutional, we believe that our clients would take the risk. On account of this fact, you need make no detailed investigation of these points, but we shall be very glad, nevertheless, to have your views on the subject.

The McCall Ferry Power Company tells us that it believes that the Pennsylvania Railroad Company controls companies organized under the act under which our companies were organized, and that the condemnation powers have been successfully used.

If we can give you any further information that will assist you in rendering your opinion, kindly advise us.

Yours very truly,

Enclosures.

C. B. Eddy

(K.N.'s
12-38

(File copy of letter from Simpson, Thacher
& Bartlett's files)

LAND TITLE BUILD G
CHESTNUT-SANS
AND BROAD STREETS
PHILADELPHIA

3rd November, 1905.

Messrs. Simpson, Thatcher & Bartlett,

Dear Sirs:-

I beg to acknowledge the receipt of yours of 31st October, making certain inquiries as to the power of the McCall Ferry Power Co., a corporation created under the Act of 29th April, 1874 and supplements, for the storage and transportation of water and water power for commercial and manufacturing purposes in the Townships of Lower Chanceford, in ~~Way~~ York County, and Martic, in Lancaster County.

I understand that it is the desire of the Company to appropriate, under an exercise of the right of eminent domain, a large piece of land near McCall's Ferry, in the Township of Martic, which is required for terminal and storage purposes; that this land, in the judgment of the Company, is absolutely necessary for the successful conduct of its business in the securing and distributing water and water power.

The Supreme Court may say of its action in Keller vs. Riverton Water Co., 161 Pa. 422, that it did not mean to decide that water power companies were vested with the right of eminent domain, and if the Court shall be of the opinion that there is no such vesting of power, they will not hesitate, by reason of anything done in the Riverton case, to so decide.

Water supply and water power companies possess, in my judgment,

S. T. & B., No. 2.

AND TITLE BUILDING
CHESTNUT—SANSUM
AND BROAD STREETS
PHILADELPHIA

in Pennsylvania, precisely the same powers, in the matter of the right to exercise eminent domain.

The power conferred by the Act of 1874 is amended by the Act of 16th May, 1889, which, in my judgment, embodies the whole grant which is to be considered.

The Act is not very happily worded; but, in my judgment, it contains, beyond question, a grant sufficiently broad to include the exercise of the right of eminent domain for the purpose desired.

The phraseology itself, read with reasonable intelligence, is broad enough, and the intention of the Legislature to confer the power, is disclosed by the title itself, "authorizing companies incorporated for the supply of power to the public, or for the supply of water and water power for commercial and manufacturing purposes, to condemn property and rights for the purpose of obtaining and supplying water or water power."

The property in the present case is desired to be appropriated in the performance of the duty of "obtaining and supplying water power."

Not only does the Act confer upon such companies the power to "provide, erect and maintain all works and machinery necessary or proper for raising and introducing, etc. a sufficient supply of etc. water and water power as aforesaid"; but also, to accomplish the purpose, permits them to "provide, erect and maintain all proper buildings, cisterns, reservoirs, pipes and conduits for the reception and conveyance of water power." Such companies are given power

LAND TITLE BUILT TO
CHESTNUT-SANBORN
AND BROAD STREETS
PHILADELPHIA

S. T. & B. N^o. 3.

to appropriate so much of the water from the rivers, etc., as may be necessary for the purposes, and they are empowered "to enter upon such lands, etc. as may be necessary to occupy * * * * for the construction of their works.

It is true that there is specific power to appropriate the water, followed specifically by a provision for compensation in accordance with the 41st Section of the Act. I do not regard this as important, inasmuch as all the powers to enter upon lands, etc., given to such companies, are followed by a requirement "if any injury be done to private property", they "shall make compensation therefor in a manner provided for in the 41st Section of this Act." If it should be held that companies so necessary to the public as those created for the supply of water, do not possess the right invitum to occupy lands necessary for their purposes, the whole provision in Pennsylvania for such supply of water may be rendered worthless.

I am very decidedly of the opinion that lands may be appropriated by water companies, adversely, upon the terms of compensation in the manner provided for in the 41st Section of the Act of 1874.

Whilst water supply and water power companies may be held limited to supplying with water and water power, the territorial districts specified in their respective charters, I do not think there is any limitation upon them, either to obtain the supply of water, or to acquire land for the requisite buildings and works within such districts.

S. T. & B. N^o. 4.LAND TITLE BUILDING
CHESTNUT—SANDWICH
AND BROAD STREETS
PHILADELPHIA

The question as to whether the water power company is "the sole judge of the necessity of the particular land needed," to the exclusion of any right on the part of the owner to prove "that some other piece of land is just as good for the purpose of the company," is more difficult.

In no State has it been more thoroughly ~~proven~~^{settled} than in Pennsylvania, that the right of a Railroad Company, authorized to construct a railroad between two points, is one which can be exercised by it without any ~~right~~^{right} to show that another location could be made. The discretion of location in such cases in this State is unreviewable.

The power, however, in the case of railroad companies, is one to "locate, fix, mark and determine such route for railroad as it may deem expedient."

I know of no decisions upon the subject of possible right of review, in cases where the power is given by phraseology similar to that by which, in the Act of 1889, it is conferred.

The power vested in the water companies is "to provide, erect and maintain all works and machinery necessary or proper for raising and introducing, etc."

The right of entry upon lands is to such extent "as may be necessary to occupy, etc. for the construction of said works, etc."

The power is not in words conferred upon the companies to provide works and machinery, etc., which, by the Company, shall be deemed necessary. The condition of the entry is that it shall be

J. T. & B. No. 5.

LAND TITLE BUILDING
CHESTNUT-SANSLOW
AND BROAD STREETS
PHILADELPHIA

necessary.

It is therefore within the power of the Supreme Court to determine that the discretion of the water companies in the appropriation of private lands, is reviewable, and that the taker requires, as a condition prerequisite, not the determination of necessity by the company, but the actual necessity.

I do not think, however, that our Supreme Court will put upon the power such a narrow restriction. I think the company will be granted the right to determine the necessity, subject to revision only in cases almost amounting to a fraudulent exercise of discretion.

I can conceive the possibility of such outrageous appropriation as would induce the Court to interfere.

Whilst I am not able to state with certainty that the Courts will not review the discretion of the water power companies in the appropriation, I am decidedly of the opinion that there will be no interference with the discretion if the circumstances are such that the Court must conclude that the discretion was exercised in a matter as to which there was a discretion, or as to which there could be an honest different opinion.

Some restraint will undoubtedly be exercised; but as I have suggested, it will be under circumstances almost amounting to fraud. I cannot conceive that our judicial tribunals will take upon themselves the determination of whether or not tract A or tract B is best for the purposes of the water company.

S. T. & B. N^o. 6.LAND TITLE BUILDING
CHESTNUT—SANSON
AND BROAD STREETS
PHILADELPHIA

I express no opinion upon the point discussed by Mr Farnsworth as to the fear that the Federal Courts may hold the Act of 1889 unconstitutional, in view of what you say.

I do not think, however, I would bother much in reaching a conclusion if the only danger would lie in the probability of any such determination by the Federal Court.

I return the papers you sent me, and am

Very truly yours,

John F. Tamm

LAND TITLE BUILDING
CHESTNUT-SANSON
AND BROAD STREETS
PHILADELPHIA

15th December, 1905.

Messrs. Simpson, Thatcher & Bartlett,

Dear Sirs:-

I have just had a conference with Mr. Beyer with reference to the proposed taking of the Robert E. Fry tract by the McCall Ferry Power Company, and several matters have arisen as a result of this conference which makes it necessary for me to communicate with you.

Incidentally, I have learned from Mr. Beyer that the dam which is intended to be constructed will raise the river higher than was originally expected, and will flood some lands that we do not now own. As you know, I have always insisted upon the right to erect a dam being exercised to such extent as to flood no lands other than those owned by us. I am very certain that if the Court should reach a conclusion that we were exercising any power which we may possess in the way of eminent domain, to acquire lands which we intend to flood, we would be held guilty of an abuse of power.

This is merely in passing. I find that the McCall Company was merged or consolidated on the 14th day of April, 1905, the Governor having held the merger papers for many months. I had supposed that the merger took place at an earlier date.

The Act of 13th April, 1905, (P.L. 152), which is entitled: "An Act providing that the right of eminent domain, as respects the appropriation of streams, rivers or waters, or the land covered thereby, shall not be exercised by water companies incorporated

S. T. & B. N^o. 2.LAND TITLE BUILDING
CHESTNUT-SANSON
AND BROAD STREETS
PHILADELPHIA

under law," thus enacts:-

"That no water company hereafter incorporated under any law, shall have power or exercise the right of eminent domain as respects the appropriation of the streams, rivers or waters of this Commonwealth or any of them, nor the land covered thereby."

Whilst this Act does not say no land shall be taken "for terminal storage purposes," yet it is exceedingly doubtful whether the Court will hold that the right of eminent domain exists for an incidental purpose where it has been expressly taken away for the main purpose, viz, the appropriation of the streams, rivers and waters.

I very much fear our Supreme Court will hold that no right of eminent domain longer exists in water companies incorporated after the 13th of April, 1905.

Whether or not a consolidated or merged company is a company newly "incorporated", is an exceedingly nice question.

Under our Merger Acts, the consolidated company possesses all the franchises of the old company. It may therefore be contended that the Act does not apply, and was not intended to apply, to a company resulting from such consolidation or merger.

In this State the status of a consolidated company is not very accurately defined. Whether or not it is a new incorporation, is a matter of some doubt.

Under the Federal decisions, the status of a consolidated company would appear to be that of a new company. I am rather inclined